

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548

FILE: B-220015 DATE: November 1, 1985
MATTER OF: Rexroth Corporation

DIGEST:

1. An award based on initial proposals, without holding discussions, is proper where the solicitation advised offerors of the possibility and there was adequate competition to demonstrate that award would result in a fair and reasonable price.
2. Contracting agency's decision not to open negotiations after receiving a late price reduction from one offeror--and to proceed with an award based on initial proposals--is reasonable where the expenses of conducting preaward surveys on the intended awardee and its subcontractor already have been incurred and thus will diminish the potential cost saving, and the firm offering the late reduction did so 2 months after the initial closing date, only, it appears, after determining from the preaward survey activity the identity of the intended awardee, so that the firm thus would enjoy a competitive advantage not contemplated by the normal procurement process if negotiations were held.

Rexroth Corporation protests the award of a contract to York Industries, Inc. under request for proposals (RFP) No. N00140-84-R-1309 issued by the Department of the Navy for arresting gear engine components to be used on Navy ships. Rexroth alleges that the Navy abused its discretion when it made the award on the basis of initial proposals with knowledge that Rexroth wanted to revise its proposed costs downward. We deny the protest.

The Navy received six price offers in response to the RFP by the May 6, 1985 closing date. The RFP did not require the submission of technical proposals and no evaluation factors other than price were contained in the solicitation. In accordance with the RFP, the Navy evaluated the offerors' prices on the basis of the price proposed for the basic contract quantity of one ship set of arresting gear

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components and one option set of such components. York had the lowest evaluated price, \$1,705,640. Rexroth's price of \$1,739,999.68 was evaluated second low.

After conducting a preaward survey of York, the Navy found the company to be nonresponsible. Because York was a small business offeror, the Navy forwarded its preaward survey to the Small Business Administration (SBA) for a determination whether the SBA should issue a certificate of competency. At about the same time that the Navy was considering York's responsibility, Rexroth submitted two written price reductions, the first in a July 1 letter, reducing its initial price offer to approximately \$1,640,300, and the second in a July 24 letter, further reducing it to approximately \$1,602,300, a price \$103,340 below York's. The SBA issued a certificate of competency to York, and the Navy, ignoring Rexroth's offered price reductions, concluded that an award to York on the basis of its initial proposal would be in the best interest of the government. The Navy awarded the contract to the company on August 20.

Rexroth argues that although its late price reductions per se could not be accepted by the Navy, they were substantial enough to indicate that opening negotiations and requesting best and final price offers, rather than making an award on the basis of the initial price proposals, would prove highly advantageous to the government.

As a general rule, a contracting agency may make an award on the basis of initial proposals, without holding discussions or requesting best and final offers, provided that the solicitation advised offerors of this possibility, and there has been adequate competition to demonstrate that the award will result in a fair and reasonable price. Consolidated Industries, Inc., B-210183, Aug. 25, 1983, 83-2 C.P.D. ¶ 249. Both requirements were satisfied here. Clause L59 on page 37 of the RFP informed offerors that award may be made based on initial proposals, without discussions, and that initial offers thus should be submitted on the price and technical terms most favorable to the government. Further, since the variation between the three low offers was only 7 percent, and York's price compared favorably with the prices paid under two prior contracts for arresting gear components, the Navy determined that the price submitted by York was fair and reasonable, and was based on adequate competition. We find no basis for questioning the Navy's determination. See True Machine Co., B-215885, Jan. 4, 1985, 85-1 C.P.D. ¶ 18.

The question remains whether, notwithstanding the above general rule, the Navy should have opened negotiations based on Rexroth's proposed price reductions.

We have held that an agency may, but is not automatically required to, open negotiations where one offeror submits a late modification that reduces its price. Gemma Corp., B-218389.2, Aug. 30, 1985, 85-2 C.P.D. ¶ 252. Negotiations need not be opened where award is to be made on an initial proposal basis unless a potentially significant proposed price reduction, or some other proposed modification, indicates that negotiations would be highly advantageous to the government. Timex Corp., B-197835, Oct. 10, 1980, 80-2 C.P.D. ¶ 266.

The contracting officer determined that the potential savings indicated by Rexroth's proposed price reduction were not sufficient to warrant disruption of the procurement process in this case. The contracting officer's position was based in part on the fact that Rexroth's price reduction was not offered until July 24, more than 2 months after the initial closing date, and after the expense of conducting the preaward surveys had been incurred. The contracting officer also was influenced by the fact that (as indicated in a June 20 letter from Rexroth to the Navy) Rexroth had become aware, possibly from the preaward survey activity, that York was in line for the award as the low offeror. Rexroth's proposed reductions were submitted after the Navy received the June 20 letter, and the contracting officer believed it was inadvisable to open negotiations based on a price reduction from an offeror which knew the identity of the likely awardee.

Although we do not consider the potential 6 percent cost saving indicated by Rexroth's proposed reduction unimportant, we believe the contracting officer's determination not to open negotiations was reasonable under the circumstances. The contracting officer properly factored the time and expense of York's preaward survey into his consideration of the potential savings from opening negotiations. In this regard, we do not believe that offerors generally should be permitted to disrupt unilaterally, and thereby postpone, an orderly procurement procedure by offering late price reductions. To hold otherwise would defeat the purpose of the solicitation's late proposal provisions--to alleviate confusion, to assure equal treatment of all offerors, and to maintain the integrity of the competitive system. Timex Corp., B-197835, supra.

Moreover, we share the contracting officer's view that where it appears one offeror has determined the identity of the intended awardee during the pendency of an award based on initial proposals, it is reasonable not to accept a proposed price reduction from that offeror as a basis for opening negotiations. Although there is no indication in the record that Rexroth had knowledge of York's offered price, a firm's knowledge of the low offeror in a procurement based on price competition automatically signals the firm that it must lower its price to be considered for the award. This knowledge could place the firm in a significantly advantageous competitive position if negotiations were held. Such a competitive advantage is not contemplated by the normal procurement process; the prohibition against revealing the identities of the offerors on a negotiated procurement avoids this situation. While offerors cannot be prevented from gaining information by, as Rexroth puts it, "reading the tea leaves of a procurement," no offeror is entitled, in circumstances like those here, to impose a reopening of a competition to enable it to utilize information so acquired.

Rexroth asks that we advise the Navy not to exercise the option under York's contract without first issuing a new solicitation to determine whether more favorable prices will be available for the option quantities. As the Navy states in its report that it intends to comply with all regulatory requirements in deciding whether to exercise the option, we will not consider this matter. See Bobnreen Consultants, Inc., B-218214, Feb. 27, 1985, 85-1 C.P.D. ¶ 251.

Rexroth requests its proposal preparation costs and attorney's fees. We will not allow recovery of these costs where, as here, we find the protest to be without merit. 4 C.F.R. § 21.6(a) (1985); John C. Kohler Co., B-218133, Apr. 22, 1985, 85-1 C.P.D. ¶ 460.

Rexroth's protest is denied.

for Seymour Efron
Harry R. Van Cleve
General Counsel